

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF  
THE TTAB

Hearing:  
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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re CMC Magnetism Corporation

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Serial No. 76/100,294

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David E. Dougherty of Dennison, Schulz & Dougherty for CMC  
Magnetism Corporation.

Brian D. Brown, Trademark Examining Attorney, Law Office  
105 (Thomas G. Howell, Managing Attorney).

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Before Hairston, Walters and Holtzman, Administrative  
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

CMC Magnetism Corporation seeks registration on the  
Principal Register of the mark shown below,



for "providing telecommunications connections to a global computer; telecommunications services, namely personal communication services; broadcasting programs via a global computer network; electronic mail services; web casting audio and visual programming via a global computer network," in Class 38.<sup>1</sup>

The Trademark Examining Attorney has refused registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d), on the ground that applicant's mark is confusingly similar to the following seven marks, previously registered to a single entity:

(1) Registration No. 1,988,832 issued July 23, 1996  
(Section 8 affidavit accepted; Section 15 affidavit filed)  
for the mark NICE shown below,

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<sup>1</sup> Serial No. 76/100,294, filed August 1, 2000, and asserting first use and first use in commerce in March 2000. The application contains the statement that: "The mark consists of a trapezoid with one curved side and the letter 'S' superimposed thereon all over the word 'NiceShipping.'"



for "communication systems, namely direction finding and monitoring systems comprised of antennas, receivers, processors and software in the field of digital signal processing, numeric and mapping algorithm; telecommunication digital recording systems comprised of digital signal processors, telecommunication processors and ethernet token rings; command, analyzer and control systems comprised of bridges, routers and voice servers;"

(2) Registration No. 2,024,791 issued December 24, 1996 for the mark NICELOG for "multi media multi channel digital voice logging system, comprised of integrated circuits, mass memory elements, namely blank hard disk audio tapes, and software which facilitates the recording of communications;"

(3) Registration No. 2,111,229 issued November 4, 1997 for the mark NICECALL for "multimedia multi-channel digital voice logging system, comprised of integrated circuits mass memory elements, namely Digital Audio Tape(DAT) drive and software which records, stores, archives and retrieves audio segments;"

(4) Registration No. 2,168,019 issued June 23, 1998 for the mark NICEFAX for "logging system, comprised of fax machines, telephone lines, computer printers and computer workstations, which workstations are composed of computers and computer software for use in the field of digital signal processing;"

(5) Registration No. 2,177,411 issued July 28, 1998 for the mark NICEFLOW for "unified messaging computer system comprising computer and voice and data fax processing cards and telephone networks, communication interface cards, lan cards, wan cards, and software for providing voice, data and fax messaging capabilities;"

(6) Registration No. 2,213,759 issued December 29, 1998 for the mark NICE shown below,



for "telecommunication digital recording systems comprised of digital signal processors, telecommunication processors and ethernet token rings; command analyzer and control systems comprised of bridges, routers and voice servers; multi media channel digital voice and fax logging systems comprised of telephone lines, integrated circuits, mass memory elements and software; unified messaging platforms comprised of managing, generation, delivery, workflow of voice, fax and data information, communication systems, namely, direction, finding and monitoring systems comprised of antennas, receivers, processors and software in the field of digital signal processing, numeric and mapping algorithms;" and

(7) Registration No. 2,341,646 issued April 11, 2000 for the mark NICE VISION for "video logging systems comprised of video machines, telephone lines, workstations, software in the field of digital signal processing, computers and printers."

When the refusal was made final, applicant filed this appeal. Applicant and the Examining Attorney have filed briefs and an oral hearing was held. We reverse the refusal to register.

The Examining Attorney maintains that applicant's mark and the cited registered marks are confusingly similar because of the inclusion of the identical term "NICE"

therein. Further, with respect to applicant's services and registrant's goods, the Examining Attorney argues that "there is a clear overlap or relationship between the respective goods and services and at the very least, both the application and the cited registrations identify goods and services that are related to or used in the field of telecommunications." (Brief, p. 7).

Applicant, in urging reversal of the refusal to register, argues that its mark and the cited registered marks are dissimilar in their entirety, and that the word "NICE", as applied to registrant's goods, is highly suggestive such that the cited registered marks are not entitled to a broad scope of protection. In this regard, applicant relies on the following definition of the word "nice" taken from Webster's Ninth New Collegiate Dictionary:

**nice:** 3. possessing, marked by or demanding great or excessive precision and delicacy.

Lastly, applicant argues that the purchasers of applicant's services and registrant's goods are sophisticated, and thus are not likely to be confused.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities/dissimilarities between the marks and similarities/dissimilarities between the goods and services. Federated Food, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

With respect to the marks, while we recognize that applicant's marks and the cited registered marks all include the term "NICE", when we consider the marks in their entirety, as we are obliged to do, there are specific differences in the marks. In particular, applicant's mark includes a prominent design feature consisting of the letter "S" superimposed on a trapezoid. The term NICESHIPPING is beneath the letter "S" and in much smaller letters. This results in a mark that, when considered in its entirety, is different in overall commercial impression from registrant's marks.

Further, as demonstrated by the dictionary definition, the word "nice" has some suggestiveness when used in connection with systems comprised of telecommunications

equipment. These kinds of systems possess and/or demand excessive precision, and thus may be considered "nice". Consequently, the cited registered marks are not entitled to a broad scope of protection.

Insofar as the goods and services are concerned, while they may be said to be commercially related, there are, nonetheless, specific differences between applicant's telecommunications services and registrant's goods used in the telecommunications field. Telecommunication services involve the rendering of voice, data and video communications whereas registrant's goods are systems comprised of various telecommunications equipment. Moreover, in the case of registrant's goods, it appears that they are highly technical in nature. As such, it is likely that purchasers of these products would exercise care in their selection.

In view of the cumulative differences between applicant's mark and the cited registered marks and the involved goods and services; the somewhat limited scope of protection to be accorded the cited registered marks; and the care exercised by purchasers of registrant's goods, we find that there is no likelihood of confusion in this case.

**Decision:** The refusal to register under Section 2(d) is reversed.